

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JESUS AMIEVA,

Plaintiff,

v.

BRIAN WARD, *et al.*,

Defendants.

Case No. 3:22-cv-00348-MMD-CSD

ORDER

Plaintiff Jesus Amieva brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center. (ECF No. 13.) On September 5, 2023, this Court ordered Amieva to update his address and either pay the full \$402 filing fee for this civil action or file an application to proceed *in forma pauperis* for a non-inmate by October 5, 2023. (ECF No. 28.) That deadline expired without compliance or any other response from Amieva, and his mail from the Court is being returned as undeliverable. (ECF No. 31.)

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss

1 an action on one of these grounds, the Court must consider: (1) the public's interest in
2 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk
3 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
4 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine*
5 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Amieva's
8 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure that brought about the Court's need to consider
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir.
18 2002). Courts "need not exhaust every sanction short of dismissal before finally
19 dismissing a case, but must explore possible and meaningful alternatives." *Henderson v.*
20 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically
21 proceed without the ability for the Court and the defendants to send Amieva case-related
22 documents, filings, and orders, the only alternative is to enter a second order setting
23 another deadline. But without an updated address, the likelihood that the second order
24 would even reach Amieva is low, so issuing a second order will only delay the inevitable
25 and further squander the Court's finite resources. Setting another deadline is not a
26 meaningful alternative given these circumstances. So the fifth factor favors dismissal.

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